



# ROYAL STUDIES JOURNAL

2019

VI

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WINCHESTER  
UNIVERSITY PRESS



## Flowers of the Crown in English Legal Thought: Metaphorical Assessments of Royal Power in Transitional Periods of Monarchy

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**Abstract:** This article connects legal history with cultural and intellectual approaches to the history of late medieval England by focusing on the expression, ‘flowers of the crown.’ Believed to have originated in the early Stuart period, this article locates its origins much earlier. After the Angevin kings showed a liking for floriated crowns, a number of poets, clerics, and common lawyers worked flowers into their appraisals of monarchy throughout the fifteenth century. Up to the Stuarts, this metaphor was sometimes helpful for reminding grantees that prerogative donations and delegations, like flowers, cannot be guaranteed to last forever, and indeed eventually die once plucked from their source. This is a finding that prompts consideration of the circumstances that have compelled jurists and politicians to invoke metaphors in their assessments of royal power more generally. In turn, new insights are generated about the crown in modern English thought.

**Keywords:** crown; flowers; monarchy; law; constitution; England

Acts of Parliament may take away Flowers and Ornaments of the Crown, but not the Crown itself; they cannot bar a Succession, nor can they be attained by them; and Acts that bar them of possession are void.

Chief Justice Finch, *Case of Ship Money* (1638).<sup>1</sup>

this fourth Edition ... conteyneth nothing but his Majesties owne, being sweet and fruitfull flowers of his Crowne; for the laws of England are indeed so called, *Jura Coronae*, or *Jura Regia*: Because as Bracton lib. I. cap.8. saith: *Ipse autem Rex, non debet esse sub homine, sed sub Deo & Lege, quia Lex facit Regem*.

Sir Edward Coke, *Le Quart Part des Reportes* (1604).<sup>2</sup>

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The crown is seen today in the United Kingdom as both the source of executive power and the representative of the state itself, less a rights-and-duties-bearing personality than a metaphor for public authority good and bad. Conventional explanations hold that things became this way during the 1830s and 1840s, amid

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<sup>1</sup> *Cobbett's Collection of State Trials* (London, 1809), 3:1235.

<sup>2</sup> Edward Coke, *Le Quart Part des Reportes del Edward Coke Chivalier, l'Attorney General le Roy* (London, 1604; *STC* 5502.3), sig. B5r (preface). Coke translates Bracton as: “The King is under no man, but only God and the law for the law makes the King.”

moves to reform the relationship between the ministry and the Commons (the politics of which spilled into Queen Victoria's very own bedchamber). External factors were at play in this transformation too, as the imperial crown came to be juxtaposed against colonial crowns, then federal and subnational crowns. Notwithstanding variations of emphasis among scholars as to the key turning points along the way from a personal crown to an impersonal crown, this is a constitutional transformation generally considered to have been completed by the start of the twentieth century.<sup>3</sup>

The crown had a different kind of prominence in English legal thought during the Middle Ages. Onwards from the common law reforms of Henry II, a separation began to develop between *crown* and *king* in discussions about the administration of justice. By the time of 'Bracton' (1225?–1260), a more abstract crown was starting to find juxtaposition against the king himself.<sup>4</sup> The duality was emphasised in various Exchequer and King's Bench cases in the Year Books of the fourteenth and fifteenth centuries, before sharpening more profoundly in the sixteenth-century reports of Plowden. In contrast to the *king*—a natural person (or body) whose personal actions demanded especially sensitive consideration—the idea of the *crown* in English legal thought transformed into an immaterial representation of kingship and all the dignity of royal office. The crown became symbolic of the power that had always ever fallen upon successive kings and would always ever fall upon successive kings. A distinction of this kind was often made to contrast the immortality of the crown with the mortality of the king, a correlate of the theory of the king's two bodies: what F.W. Maitland would viciously scorn for its inconsistency of application, and what Ernst Kantorowicz would fascinate us with in pursuit of its origins and trajectories.<sup>5</sup>

Focusing on the events in legal and political history that saw modifications to the crown accepted or rejected can add greater nuance to our understanding of the need to separate an everlasting crown from its mortal bearer. It may have been one thing for juristic scholars in England, and indeed across Europe, to hold that *corona non moritur*. But it was another thing to expect that individuals in judicial or political office, in times of tumult and transition, would automatically have similar regard for the eternity of donations, delegations,

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<sup>3</sup> See, for example: P. Cobbett, "The Crown as Representing the State," *Commonwealth Law Review* 1 (1903): 23–30; P. Cobbett, "The Crown as Representing the State," *Commonwealth Law Review* (1904): 145–156; F.W. Maitland, "Crown as Corporation," *Law Quarterly Review* 17 (1901): 131–146; Frederic William Maitland, *The Constitutional History of England* (Cambridge: Cambridge University Press, 1968), 417–418; A.S. Foord, "The Waning of the Influence of the Crown," *English Historical Review* 62, no. 245 (1947): 484–507; Norman Chester, *English Administrative System, 1780–1870* (Oxford: Clarendon Press, 1981), 77–97; Maurice Sunkin and Sebastian Payne, ed., *The Nature of the Crown* (Oxford: Oxford University Press, 1999); Janet McLean, *Searching for the State in British Legal Thought* (Cambridge: Cambridge University Press, 2012); and Cheryl Saunders, "The Concept of the Crown," *Melbourne University Law Review* 38 (2015): 873–896. However flatteringly Maitland's contributions on the crown as 'corporation sole' continue to appear among the footnotes of recent legal scholarship on the crown, sadly few of those scholars trouble themselves any more with the intellectual project Maitland tried to inspire so long ago now: namely, to see the history of law as the history of legal *ideas*, and then to search for the continuities and changes from the Domesday Book to the present, sensitive to individual motivations and institutional change.

<sup>4</sup> See: *Bracton on the Laws and Customs of England*, trans. Samuel E. Thorne (Cambridge, MA: Harvard University Press, 1968).

<sup>5</sup> See: Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (1957; repr., Princeton: Princeton University Press, 2016); Maitland, "Crown as Corporation." See also David Runciman, *Pluralism and the Personality of the State* (Cambridge: Cambridge University Press, 1997); David Runciman and Magnus Ryan, ed., *Maitland: State, Trust and Corporation* (Cambridge: Cambridge University Press, 2003).

and designations from the crown in England. Maitland may indeed have been right about the needlessness of foisting some special personality upon the crown in nineteenth-century jurisprudence. But perhaps he was also a bit too quick to flee from a consideration of the reasons *why* jurists before him found the need to postulate the crown in the ways that they did. Moving on from Maitland and Kantorowicz, then, it might be asked of the later medieval context, how and why lawyers, judges, and politicians came to some consensus about which acquisitions and alienations performed by the king were to last forever and affect the realm, and which activities, on the other hand, were to last only as long as his lifetime, and affect only himself and those in contract with him. This article is concerned with the language used to make this distinction.

Like so many other constitutional ideas, the crown inspired plenty of rumination in the early modern period in the middle of all this: that is, between the late-medieval abstraction of the crown from kingship and the Victorian triumph of the crown as synonym for the state. There are good reasons for this. Constitutional historians of the Stuart period have long recognised—if sometimes to the extent of blindness to other periods—the special kind of inspiration that came to enliven political critics of royal power and favouritism during times of unpopular kingships. Likewise, such contexts could bring the best out of loyalist supporters of the king too, and the language put to the service by both sides was often charming despite the message.

In 1962, the Oxford historian of political thought, J.W. Gough, became spellbound by a quirk of English constitutional language: namely, the expression, “flowers of the crown” (taken by him to mean “some element of the prerogative”). Gough identifies the origins of this expression in an early Stuart age of unpopular kings, inquisitorial judges, renegade assemblies, and political commentators inclined to see all of these elements working together just fine. It was “appropriate,” Gough tells us, “to call the prerogative a flower in a society where all was harmonious and therefore beautiful and to be admired.” The “flowers of the crown” were invoked, in other words, to defend an “ancient, harmonious, balanced constitution,” though it sometimes went the other way.<sup>6</sup> Sometimes, most often in the courts, utterances of the expression informed defences of royal power (most famous of all, perhaps, by Chief Justice Finch in *Ship Money*). Other times, utterances of the expression were attached to a moderation of royal power (as in the preface to the fourth part of Sir Edward Coke’s *Reports*). To be as precise and as charitable to Gough as possible: to invoke “flowers of the crown,” in the twin constitutional sense of *constraining* the personal powers of the monarch while *retaining* the monarch’s central place between parliament and the judiciary, was distinctive to English politics in the period between 1597 and 1647.<sup>7</sup>

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<sup>6</sup> J.W. Gough, “Flowers of the Crown,” *English Historical Review* 77, no. 302, (1962): 86–93.

<sup>7</sup> J.G.A. Pocock had published the first edition of a landmark book just a few years before this on the kinds of historical thought used to invoke an ‘ancient constitution,’ though he appears nowhere in Gough’s footnotes. This might owe itself to the pressure felt by some of Pocock’s devotees to insist that remarks about the ancient constitution, and the metaphorical repertoire that went with it, were more often turned against the person of the monarch than they were to conserve the crown during the disquiet of the Tudor-Stuart transition. Whereas Gough prioritised the politics of parliament – where none, at least before 1640, could appear too one-sided in their assessments of royal power – Pocock took a different message from the law reports and antiquarian treatises of the long seventeenth century. For in these sources were to be discovered what appeared, to him, a novel strain of common law thinking that was suddenly idealistic of timeless custom in times of constitutional crisis. See:

It is indeed true that fewer and fewer individuals were prone to invoke this kind of language in appraisals of the crown during periods of interregnum, restoration, and revolution (and for respectively different reasons). But it cannot be sustained any longer that the expression was unheard of before 1597 (nor, although it will not be argued here, that constitutionalist appropriations of the expression were unique to England at this time).<sup>8</sup> Looking at the Year Books and Parliamentary Rolls, it is shown instead here that the juristic conception of a crown bearing flowers in England predates the origins identified by Gough by at least 190 years, and it is suggested that the expression might never have been uttered were it not for the Angevin aesthetic. “Flowers of the crown” could refer to the responsibilities and privileges of kingship, or it could gesture to the impermanency of royal donations; in some iterations, however, a precise legalistic meaning is less distinct or obvious. A subtle and beautiful way, occasionally, to rein in those powers implicit in the crown—whether *the* prerogative generally or *a* prerogative specifically—the expression developed into a term of art, but did not originate, in the Stuart age.<sup>9</sup> Rather, its origins are later medieval. To illustrate as much, a handful of iterations of this idea—juristic as well as literary—must be considered before arriving upon the means by which Sir Edward Coke used the expression. While acknowledging that Coke was more flexible than some have allowed when it came to balancing out of the powers of crown, parliament, and common law, it will be shown here that flowers brought out some of his best appraisals of monarchical power.<sup>10</sup> For all the eccentric specificity of this particular research focus, this article, by exploring some of the connections between cultural history, legal history, and the history of ideas, seeks to ask why biological metaphors generally, and flowers specifically, have lent themselves to appraisals of the crown in the English constitution in the past, and by extension, why this tradition is no longer followed in the present.

## Flowers and the Crown to the Wars of the Roses

Both the symbolism and the aesthetics associated with English regalia underwent changes during the second half of the Middle Ages. During the Saxon period, the king’s headpiece—whether *galea* (helmet) or *corona* (crown)—was regarded with solemnity but it was

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J.G.A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge: Cambridge University Press, 1987), esp. 30–69.

<sup>8</sup> For some contemporaneous expressions in French register with respect to ‘les fleurons de la couronne’, see: Pierre de Lostal, *Le Soldat Francois* ([Paris], 1604), 128; Jean Bacquet, *Des Droicts du Domaine de la Couronne de France* (Paris, 1608), 3:349.

<sup>9</sup> S.B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge: Cambridge University Press, 1936), 42–43: “Prerogative, we may say, meant that reserve of undefined power necessary to any government to enable it to deal with emergencies ... But ... the prerogatives seem to be rather those exercises of the Prerogative which have received definition and therefore restriction, by litigation and the process of law.”

<sup>10</sup> Our understanding of the nuances of Sir Edward Coke has been greatly advanced because of recent legal historical scholarship. See: David Chan Smith, *Sir Edward Coke and the Reformation of the Laws: Religion, Politics and Jurisprudence, 1578-1616* (Cambridge: Cambridge University Press, 2014); Ian Williams, “Edward Coke,” in *Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham*, ed. Denis Galligan (Oxford: Oxford University Press, 2014), 86–107; and Alan Cromartie, *The Constitutionalist Revolution: An Essay on the History of England* (Cambridge: Cambridge University Press, 2006), 179–233.



generally revered less than the *sceptrum* (sceptre).<sup>11</sup> The abstraction of *corona* into the incorporeal symbol of the king's tenure in England occurred during the first half-century of Norman rule.<sup>12</sup> By the late thirteenth century, the crown had become that piece of regalia suspended in a kind of timelessness above the realm and king alike, and that expression of legal shorthand, in courts and parliaments, for the font of all privileges and liberties, and so it would remain within English legal thought after the Plantagenets.

Somewhat hand-in-hand with these changes was the standardisation of floral designs in the crown. Here we tread into the domains of numismatics, heraldry, iconography, sigillography, and other forensic avenues of enquiry into regalia now unfashionable to some historians. But it is within these fields that new clues are to be found about the symbolism informing the language of statecraft, which may verily prompt a reconsideration of why flowers begin to show up in legal thought down the track. It was the Angevins, it seems, who were the first flower enthusiasts. Taking inspiration from the fashions of twelfth-century France, the identification of English kings with flowers can be seen in a number of portraits and effigies of Henry II, Richard I, and John, each of which reveal enthusiasm for floral ornamentation on the crown design (and all, if we follow the late Jack Goody, amid a general decline in “flower culture” across Europe).<sup>13</sup> The floriated crown (or crown with “fleurons”) was more enthusiastically adopted in the Plantagenet period. Of course, the very word ‘Plantagenet’ is itself a certain derivative of *planta genista* or *plante de genêt*, the common broom, or *Cytisus scoparius*. The coronation of Edward I in 1274 is an event that is commonly depicted featuring a crown with fleurons. Edward saw specifically in *fleurs-de-lys* what many in France did around the same time, namely, a solemn symbol of the Holy Trinity. This may be why he had himself depicted wearing a floriated crown upon coins, despite being a king well-reputed to have loathed wearing it.<sup>14</sup> All the more reason is it noteworthy that Edward would insist, upon his deathbed, to be buried with a floriated crown. In Edward II's reign, the design became even more floriated. From this time onwards, even illustrations of ancient kings began to feature anachronistic floriated crowns.<sup>15</sup> The flower had become an essential and instantly recognisable part of the English regalia, and was now becoming equally well incorporated into royal heraldry too.<sup>16</sup> Looking across the Channel for inspiration, the English came to show the same reverence for the *fleurs-de-lys* as their French adversaries did during the long Hundred Years' War. The broom had been the favourite emblem of Charles VI of France (1368–1422); the same favouritism was imported into Windsor Castle when his very young daughter, Isabella

<sup>11</sup> See: William A. Chaney, *The Cult of Kingship in Anglo-Saxon England* (Manchester: Manchester University Press, 1970); and David Pratt, *The Political Thought of King Alfred the Great* (Cambridge: Cambridge University Press, 2007).

<sup>12</sup> George Garnett, “The Origins of the Crown,” *Proceedings of the British Academy* 89 (1996): 174.

<sup>13</sup> Jack Goody, *The Culture of Flowers* (Cambridge: Cambridge University Press, 1993), 73–100, 120–165. Plaster casts of their stone effigies, each of which featuring floriated crowns, are held by the Victoria and Albert Museum, London, REPRO/A/1938-1, 2-3, 11. See, however, the Codex Manesse (ca. 1304-40), which features a number of beautiful illustrations of floriated headpieces, often featured in bestowal by ladies upon knights. See Heidelberg University Library, Cod. Pal. germ. 848, Große Heidelberger Liederhandschrift (Codex Manesse), available online at: <http://digi.ub.uni-heidelberg.de/diglit/cpg848>.

<sup>14</sup> M.R. Holmes, “The Crowns of England,” *Archaeologia* 86 (1937): 78.

<sup>15</sup> Holmes, “The Crowns of England,” 73–90; Stephen Martin Leake, “Remarks on Crowns, and More Particularly on the Royal or Imperial Crown of Great Britain,” *Notes and Queries* 11 (1855) 289: 357–358; 290: 379–381; 291: 399–401; 292: 422–423.

<sup>16</sup> John Pinches and Rosemary Pinches, *The Royal Heraldry of England* (London: Heraldry Today, 1974), 19–60.

of Valois, received an English coronation in 1397, following her marriage to Richard II in 1396.<sup>17</sup> By the end of 1398, nearer the end of his troubled reign, an audit of the king's royal treasure inventoried eleven crowns: eight of these are confirmed to have fleurons around the circlet (or band or *filet*), in even-number configurations of eight, ten, twelve, or fourteen (with the exception of one damaged crown, which was missing a fleuron).<sup>18</sup> For his own coronation, Henry IV of England opted for a closed imperial crown with fleurons in 1399, and soon afterwards modelled the presentation of *fleurs-de-lys* on his arms, as King and Duke of Hereford and Lancaster, in line with the French fashion for displaying a trio of lilies instead of a field of them.<sup>19</sup> Subsequent coronations would see the Earl Marshal place his hands upon a flower of the crown in a distinct and solemn part of the ceremony of coronation, symbolic, apparently, of his custodianship over war in the event of its prerogative declaration.<sup>20</sup>

With this imagery in mind we can proceed to interpret a selection of textual sources from the fifteenth century. When Henry V succeeded his father in March 1413, without any controversy as to his title or claim, the triumph of the Lancastrian line was now a *fait accompli*. At this moment, *God Save the Kyng, and Kepe the Crowne* was penned, which provides a curious invocation of the floriated crown in verse, even if there is nothing explicitly offered to link the flowers with some particular or general aspect of the royal prerogative:

What doþ a kynges crowne signyfye,  
 What stones and floures on sercle is bent?  
 Lordis, comouns, and clergie  
 To ben aȝ at on assent.  
 To kepe þat crowne, take good tent,  
 In wode, in feld, in dale, *and* downe.  
 Þe leste lyge-man, wiþ body *and* rent,  
 He is a parcel of þe crowne.  
 ...  
 Ȝif sercle, and floures, *and* riche stones,  
 Were eche a pece fro oþer flet;  
 Were þe crowne broken ones,  
 Hit were ful hard aȝen to knet.  
 Auyse ȝow er ȝe suffer þat fit.<sup>21</sup>

<sup>17</sup> Laurent Hablot, "L'Ordre de la Cosse de Genêt de Charles VI: Mise en Scène d'une Devise Royale," *Revue Française d'Heraldique et de Sigillographie* 69-70 (2000): 131–148.

<sup>18</sup> For the inventory and a detailed description of the crowns, see: Jenny Stratford, *Richard II and the English Royal Treasure* (Woodbridge: Boydell Press, 2012), 9–14, 145–147, 255–265.

<sup>19</sup> Jean Scohier, *L'Estat et Comportement des Armes* (Paris: Rolet Boutonne, 1630), 76–80; Pinches and Pinches, *Royal Heraldry*, 77–100. See generally W.M. Hinkle, *The Fleurs de Lis of the Kings of France, 1285-1488* (Edwardsville: Southern Illinois University Press, 1991). For Dale Hoak, the most important change in the iconography of the English crown in the fifteenth century was the introduction of the closed design, featuring bands reaching over the top of the head, meeting at a holy cross, in an 'imperial style'. Around the base of the crown, fleurons remained. Dale Hoak, "Iconography of the Crown Imperial," in *Tudor Political Culture*, ed. Dale Hoak (Cambridge: Cambridge University Press, 1993), 54–103. See also Philip Grierson, "The Origins of the English Sovereign and the Symbolism of the Closed Crown," *British Numismatic Journal* 33 (1964): 118–134.

<sup>20</sup> B[ritish] L[ibrary], Cotton MS Vespasian B VII, fol. 100.

<sup>21</sup> "What does a king's crown signify, / What stones and flowers on the circlet are bent? / Lords, commons, and clergy / To be all of one assent. / To keep that crown, take good attention, / In wood, in field, in dale, and down. / The lowest liege-man, with body and rent, / He is a parcel of the crown. / If circle, and flowers, and rich stones, / Were from each other flensed; / Were the crown broken once, / It would be full-hard again to knit

This is not a poem about law and government, but there may still be a constitutionalist way to read it. In the first of these stanzas, appearing second in the poem, the author sets out to explain why the crown has flowers and stones encircled upon it. The answer is given that they are symbols of the unanimous assent of the three estates (lords, commons, and clergy), not forgetting, however, the smallest of liege subjects who remain a part of this arrangement. The second quoted part, a portion of the sixth stanza, dreads the prospect of the flowers and stones ever being removed and separated owing to the difficulty of uniting them again into a single crown. Foregrounding this subtle plea to preserve the balance of king, lords temporal and spiritual, and commoners in parliament is a hearty rallying cry to the people of England to stand by the new royal line, to overcome internal divisions, and to put up a solid showing against the French. This is a cause for which Henry V himself would die in 1422.

The years between 1422 and 1437 encompassed the nonage of King Henry VI (from his first year of age to his sixteenth). In these years, the prerogative of the king found its expression in a small council of regency, parliament was called ten times, and the king's courts convened as needed.<sup>22</sup> It is in the middle of this window that the Year Books provide the earliest recorded use of a floral metaphor in a formal legal discussion of the royal prerogative. During the Hillary Term of 1430, in the Court of Common Pleas, an action of trespass was brought against Thomas Chase. The matter concerned some privileges awarded in letters patent of Henry IV to the office of Chancellor at the University of Oxford, a position held after 1426 by Chase. Chase was accused of distraining his unnamed plaintiffs because they had not paved the front portion of their houses leading onto the High Street. The prerogative came into question because, among other things, the king's letters patent contained a grant of jurisdiction to the Chancellor in all cases involving pleas of trespass in Oxford, which in turn allowed serjeants appearing for the Chancellor to dispute the jurisdiction of the court.

The late medieval common law, still ambling towards but far from attaining a monopoly over peacetime civil litigation within England, was often confronted with jurisdictional dilemmas such as this one.<sup>23</sup> Where royally donated franchises and offices were concerned, extraordinary sensitivity had to be shown in the courts of common law during the reigns of tempestuous kings, lest any flippancy or carelessness in assessment be interpreted as offensive to the king's supremacy. At just nine years of age, young Henry was about as meek as monarchs could be in 1430; perhaps this is why Chief Justice William Babington used the episode to prompt his serjeants-at-law to contemplate the limits of the royal prerogative.

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[back together] / Observe before you suffer that fate." An original is kept in the Digby Manuscripts at the Bodleian Library, Oxford, and is reproduced in *Twenty-Six Political and Other Poems from the Oxford MSS. Digby 102 and Douce 322* (London: Kegan Paul, Trench, Trübner & Co. Ltd, 1904), 50–55. Although it is of somewhat less significance in this frame, a similar kind of symbolism was carried further in at least one other fifteenth-century poem, *The Wright's Chaste Wife* (ca.1462), in which the withering of flowers in a man's hat was an omen that his wife had been unfaithful: "'Syr,' he seyde, 'be the same hatte / I can knowe yf my wyfe be badde / To me by eny other man; / If my floures outhur fade or falle / Then doth my wyfe me wrong wythalle, / As many a woman can.'" See Eve Salisbury, *The Trials and Joys of Marriage* (Kalamazoo, MI: Medieval Institute Publications, 2002), available online at: <https://d.lib.rochester.edu/teams/text/salisbury-trials-and-joys-wrights-chaste-wife>.

<sup>22</sup> For context, see: Ralph A. Griffiths, *The Reign of King Henry VI: The Exercise of Royal Authority, 1422–1461* (Berkeley: University of California Press, 1981).

<sup>23</sup> See, for example: R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500–1860* (Cambridge: Cambridge University Press, 2007).



Judges had often been called upon to mediate conflicts in the administration of royal justice in England, but this case goes somewhat further than its precedents.<sup>24</sup> If the king's letters patent were really meant to guarantee immunity from all actions arising from the Chancellor's misconduct in Oxford, Babington suggested, then such an immunity could never be granted without the authority of parliament ("le quel ne peut estre grant si non par Parliament"). He continued:

all the liberties and franchises of England were in the Crown, and have come from the Crown: and if the King gives to a man a flower of his Crown, he does not give away all of the Crown, nor will it be taken as strict law, nor in any other form than which it is granted, & none will be the Judge of himself except the King, & furthermore the King gives his Judgement by intermediaries as by us and other Judges ... & this is no inconvenience, because the law intends that he will be an indifferent Judge, like we are between the King and others, & still we are Judges by the authority of the King.<sup>25</sup>

Babington's accomplishments in this passage were many. One royal donation (in this case, bestowing the incorporeal hereditament of a jurisdictional franchise) could not obstruct the expression of any other part of the law (in this case, the operation of the king's courts of common law); legal privileges found in letters patent did not qualify as "stricti juris," and might therefore require moderation in parliament and the courts; judges in the Common Pleas were empowered to interpret prerogative instruments on behalf of the king, while mediating between the king and his subjects; wherever such instruments carried provisions which clashed with existing laws or judicial arrangements, then lords and commons under king in parliament, rather than the king alone or the king in council, were best suited to legislate formally on the matter. It makes it all the more interesting for us that Babington should have chosen a floral metaphor to represent prerogative donations in this frame. Although the report of this particular case does not contain any trace of argument about the reversion of delegations to the crown upon a change in monarchical office, the metaphor alludes to the possibility that the issue was indeed raised (even if this requires a particularly imaginative reading of the transcript). To suggest that gifts from the king, like flowers, are organic and eventually die once plucked and removed from their source would indeed have been an innovative way to discuss what was, by this time, a well-established controversy in English legal thought about the delegation and conflict of crown jurisdictions going back as least as far as Bracton.<sup>26</sup>

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<sup>24</sup> See, for example: *Chancery Pleas* 32 Edw. III, in Ludwik Ehrlich, "Proceedings Against the Crown," in *Oxford Studies in Social and Legal History, Volume IV*, ed. Paul Vinogradoff (Oxford Clarendon Press, 1921), 243–246.

<sup>25</sup> Y[ear] B[ooks] Hil. 8 Hen. VI, pl. 6, 18–21 (1430.006): "en le cas cy il ad grant que il ne sera jamais enplede, le quel ne peut estre grant si non par Parliament; tous les Liberties & Franchises d' Angleterre furent en la Corone, & sont devenus de la Corone: & si le Roy done a un home un fleure de sa Corone, il ne luy done paz tout la Corone, ne il sera pris 'stricti juris', ne en nul autre forme que le done est, & nul sera Juge demene forsque le Roy, & uncore il done son Jugement par mene come par nous & autres Judges ... & c'est nul inconvenientise, car la Ley entendra que il veult estre Juge indifferent auxy bien come nous entre le Roy & autres, & uncore nous sumus Juges par authority le Roy." Judge John Martin appeared to agree with this assertion about parliament: "il ne peut grantier que trop petit jour sera contrary al Statut, que est un Ley, Sans ceo que il est auctorise per Parliament."

<sup>26</sup> Bracton, 2: 167: "Those who are concerned with justice and peace ... belong to the crown alone and [its] royal dignity, nor can they be separated from the crown, since they constitute the crown. For to do justice and give judgment, and to preserve the peace, is [in right of] the crown ... [which] cannot be transferred to persons or tenements ... nor [can it] be possessed by a private person unless it was given to him from above as a delegated

If the case of Thomas Chase and his want for better footpaths turned out to be the only episode, in this window, to trigger colourful, florally inspired conversations about the king and his powers, then its record might stand alone as an early instance of the expression, maybe even a psychedelic anomaly, but it would demand little more attention than that. This is not, however, to be. At the first day of parliament in 1437, with Henry VI shy of maturity by less than a year but still taking his seat on the royal throne at Westminster, the Lord Chancellor John Stafford opened proceedings with a speech revealing a slightly different, but no less riveting, interpretation of the flowers of the crown.

For Stafford, there were three kinds of men in England, each of whom initiated and sustained in acts of symbolism. There are the regular Christians, who at baptism, are anointed with the cross. There are the clergymen of holy orders, who bear the tonsure. There is finally the king, who bears the crown as a symbol of the government and politics of the realm (“in cuius corone figura regimen et politia regni presentantur”). Stafford continued:

the governance of the community is represented in gold, and the honour and office of the king or prince is depicted in flowers placed on the crown and decorated with jewels. ... The royal dignity is depicted in the flowers placed on the crown decorated with precious jewels; the placing of flowers on the crown depicts royal pre-eminence over subjects, which find support in the flowering of four morals, to wit, the four cardinal virtues. Prudence should be placed at the front of the crown, which should be adorned with three jewels for, namely, recollection of the past, circumspection of the present, and foresight of the future. And fortitude should be placed on the right side, adorned also with three jewels, which are audacity in action, patience in suffering, and perseverance in prevailing. And temperance should be placed on the left side, adorned with three jewels, so that it restrains excess in consumption, controls loquaciousness in speaking, and also [controls] the will and desire for luxury. Justice ought to be placed on the rear part, whose jewels are three, showing that justice must be shown to superiors, equals, and underlings ... If the moral crown of any realm is set in such order, it can be concluded ... that the crown of the realm is in the hand of God ... singularly fortified and strengthened by the authority of the Holy Bible and very many other notable authorities.<sup>27</sup>

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jurisdiction, nor can it be delegated without ordinary jurisdiction remaining with the king himself” (My rude translation of the fuller Latin: “Ea vero quae iurisdictionis sunt et pacis, et ea quae sunt iustitiae et paci annexa, ad nullum pertinent nisi tantum ad coronam et dignitatem regiam, nec a corona separari poterunt cum faciant ipsam coronam. Est enim corona facere iustitiam et iudicium, et tenere pacem, et sine quibus corona consistere non poterit nec tenere. Huiusmodi autem iura sive iurisdictiones ad personas vel tenementa transferri non poterunt, neque a privata persona possideri, neque usus, neque executio iuris, nisi hoc datum esset ei desuper, sicut iurisdictio delegata, nec delegari poterit, quin ordinaria remaneat cum ipso rege”). Bracton’s remarks upon which delegations of jurisdiction can be separated from the crown and which others remain inseparable from the crown have been interpreted in relation to courts of justice generally and lordly franchise-holding more specifically, both of which were intermittently contentious during the thirteenth and fourteenth centuries. *Calvin’s Case, or The Case of the Postnati* (1608), 7 *Co[ke] Rep[orts]* 11b; Frederick Pollock and Frederic William Maitland, *History of English Law before the Time of Edward I*, 2nd ed. (Cambridge: Cambridge University Press, 1898), 527–532, 571–594; Chrimes, *English Constitutional Ideas*, 56–58.

<sup>27</sup> *Parliament Rolls of Medieval England, 1275-1504*, ed. C. Given-Wilson (“*PROME*”) (21 January 1437), IV:495: “nam in auro, regimen communitatis notatur, et in floribus corone erectis et gemmis adornatis, honor et officium regis sive principis designatur. In floribus in corona erectis cum gemmis pretiosis adornatis, dignitas designatur regalis; nam erectio florum in corona, preeminentiam supra subditos designat regalem, que quatuor floribus moralibus debet erigi, videlicet, quatuor virtutibus cardinalibus. In anteriori parte corone, debet poni prudentia, que tribus gemmis debet ornari, scilicet, recordatione preteritorum, circumspectione presentium, et providentia futurorum. Et ex parte dextera, debet erigi fortitudo, tribus etiam gemmis ornata, que sunt audacia in aggrediendo, patientia in

This had nothing to do with the king's exercise of the royal prerogative, but the passage is attractive for other reasons. Striking first of all is the equation made between the *honor et officium regis* and the concept of royal *dignitas*. As Ernst Kantorowicz uncovered in 1957, expressions of this kind had important precedents in moves within medieval political theology to distinguish between perpetual institutions and natural individuals.<sup>28</sup> What we have here, then, is a parliamentary example of an idea more commonly identifiable in court records and treatises, both sacred and secular. Just as interesting is what follows in Stafford's oratory: the flowers of the crown, or at least the jewels adorning them, exist to remind the king that he ought to know his place, that he ought to remain patient, that he ought to stay skinny, and that he ought to stay quiet until asked, among other things besides. A doctor of civil law, still Stafford as the Archbishop of Canterbury spoke, on the topic of justice, more like a man of the cloth than a serjeant at law in his musings on the superiority of some entity to the King. If this were not already clear in the first half of the speech, then it surely was so at his return, in conclusion, to Isaiah 62:3 ("Corona regni in manu Dei"). Just what the mid-pubescent king thought about this is unclear. Henry did not voice his opinions for the record, nor indeed was he expected to.<sup>29</sup>

Some years later in his kingship, Henry VI was approached by the forger and chronicler, John Hardyng. From the north, Hardyng carried a message for the king about the flowers around his crown. Hardyng was a man with first-hand knowledge about the finiteness of time attaching to the personal pledges of kings. In 1420, he had prepared three documents for Henry V in return for which he had been led to anticipate a manor in Northamptonshire. When that king fell in France, however, so died with him his promise of land. This death was mourned by Hardyng for personal as well as patriotic reasons, for in Henry he saw not only a buyer of his services but also a model king capable of retaking Scotland and restoring England's glory in the British Isles. It would take Hardyng a few years to recalibrate his affections to Henry VI, before eventually compiling new chronicles and forgeries in defence of the claim of English kings to Scotland, a claim he considered to be imperilled by political unrest on the domestic front.<sup>30</sup> In the attaché brought with him into Westminster at the outset of 1457 was a piece of parchment containing passages on *How the Kynge shulde Reule moste specially the comon profyte of his Reme with pese and lawe*, one stanza of which captures the menace of the times perfectly. "Wharfore gode lorde, iff ye wyll gyffe me leue, I wolde say this vnto your excellence," the stanza in the lead-up closes, 'Withstonde the first mysreule and violence', and so continues:

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sufferendo, et perseverantia in continuando. Et ex parte sinistra, debet poni temperantia, tribus gemmis ornata, ut restringat sensualitatem in victu, refrenat loquelam in dictu, et voluntatem suam sive desiderium in luxu. In posteriori parte, poni debet justicia, cujus tres sunt gemme, scilicet, ut fiat justicia superioribus, equalibus, et inferioribus; dixitque ulterius, quod si corona moralis alicujus regni sic disponatur, concludi potest, quod prius assumitur corona regni in manu Dei: quibus premissis sic annotatis, et per auctoritates pagine divine, [aliasque] notabilitates quamplurimas egregie vallatis et roboratis."

<sup>28</sup> Kantorowicz, *King's Two Bodies*, 383–450.

<sup>29</sup> After the speech, it was business as usual for the next nine weeks: petitions were read, taxes were levied, and the war with France was continued. *PROME* IV: 495–510.

<sup>30</sup> Henry Summerson, "Hardyng, John," *Oxford Dictionary of National Biography*, doi:10.1093/ref:odnb/12296.

Wythstonde, gode lorde, begynnyng of debate,  
And chastyse well also the Ryotours  
That in eche shire bene now consociate  
Agayne youre pese, and all thair maynteuours;  
For treuly els wyll fall the fayrest flours  
Of your coroune and noble monarchy,  
Whiche God defende and kepe through his mercy.<sup>31</sup>

Lines of verse composed in haste, yet in conformity to metre, are prone, of course, to fluffing. Still there may be more than synonymic repetition here at work in the coupling of *crown* with *monarchy*, forasmuch as the former concept, as the material of personal regalia, represented the perfect contrast with the permanent constitutional provision within England for *dominium politicum et regale* in the midst of much turmoil.<sup>32</sup> From both corporeal crown and incorporeal monarchy, warned Hardyng, flowers “will fall,” unless the chaos of the riot goes unchecked. Although these particular lines had nothing to do with delegations and donations, still they are presented in the middle of a highly legalistic discussion about ongoing meddling with the king’s jurisdictions (by “mayntenours”), and the renewed importance of using the courts to preserve the king’s “pese and law” domestically—the optimal state of readiness, Hardyng urged, to stave off enemies from abroad desirous of seizing control of “all your monarchy”:

The fayrest floures and hieghest of empyrse  
And sounest wyll your foreyn foos suppryse.<sup>33</sup>

The next two decades marked a period of profound uncertainty for the English monarchy, even after the decline of the Hundred Years’ War, while enthusiasm for floral motifs in emblems and coats of arms was intensified. This will be obvious to most English people today, and will continue to be for as long as the affinity of the House of York to the white rose and likewise of Lancaster to the red remain popular history. The conception of “wars between the roses” was spun from the work-desks of poets captivated with nostalgia quite after the fact, though. What is rather of interest here is the abatement of the tiff of these two flowers when Henry VII offered to merge both strands into the Tudor line.

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<sup>31</sup> BL Lansdowne MS 204, reproduced in C.L. Kingsford, “Extracts from the First Version of Hardyng’s Chronicle,” *English Historical Review* 27, no. 108 (October, 1912): 740–753.

<sup>32</sup> This ideal of a “mixed monarchy” was the formulation of John Fortescue (1395–1477), who expressed significant ambivalence over the longevity and authority of royal donations. This led him to call for “a new foundation” to the crown in his extensive writings on the difference between absolute and limited monarchy. For the king of England, he wrote, should “amortise [his] livelihood to his crown, such that it may never be alienated therefrom, without the assent of his parliament ... he shall thereby be the greatest founder of the world.” John Fortescue, *The Governance of England*, in Shelley Lockwood, ed., *Sir John Fortescue: On the Laws and Governance of England* (Cambridge: Cambridge University Press, 1997), 121. Fortescue also argued that it was ‘the law’ which separates the physical body from the mystical body of the realm, in order very gently to bind the royal prerogative to the collective will of the people through its parliaments. See *In Praise of the Laws of England*, in Lockwood, *Sir John Fortescue*, 21. For Fortescue’s writings in the context of an incipient constitutionalism, see Cromartie, *Constitutionalist Revolution*, 4–32.

<sup>33</sup> For maintenance, see: Jonathan Rose, *Maintenance in English Law* (Cambridge: Cambridge University Press, 2017).

## Flowers and the Crown in the Tudor Period

Under Henry VII, the register of constitutional language began to change in important ways. There was a brief revival of legal interest in thirteenth-century ideas of *Prerogativa Regis* in support of the king's newfound "fiscal feudalism," but associated with this was no further development of Babington's conceptualisation of flowers in respect of crown donations at common law specifically, or anything about flowers in view of the prerogative generally.<sup>34</sup> What followed as Tudor constitutional thought developed, according to W.S. Holdsworth, was a hardening distinction between "separable" and "inseparable" prerogatives, in relation to the careful beginnings of the idea that royal power may be accountable to parliamentary review, and ongoing enquiries about the king's office and what it entailed.<sup>35</sup> Flowers had nothing to do with any of this either. The expression never made its way into Henry VIII's parliaments, where statutes were more elaborate than those enacted by parliaments before it. For example, the Ecclesiastical Appeals Act (1532), emblematic of a wider "jurisdictional revolution" associated with royal policy, declared the need to provide for "the entire and sure Conservation of the Prerogatives, Liberties and Preeminences of the said Imperial Crown of this Realm," but there was nothing organic or biological about any of that. The Act for Recontinuing Liberties in the Crown (1535) was even more concise in technical administrative language, interesting moreover for mentioning the crown itself only twice.<sup>36</sup> Evidently, even if the standard way to set out the powers of the crown remained, as it had always been, through plural abstract nouns of Franco-Latin derivation (for example, "Liberties"), a metaphor standing in for the same was not to be permitted in even the most protracted statutes.

The expression was also not to find favour among the common lawyers and the reporters following them around in this period either. Though serjeants now and then allowed themselves to become enchanted by abstract imagery in descriptions of royal, judicial, and parliamentary power, still it had become more conventional in Tudor courts to contemplate a disaggregated crown by referring to its "parcels" (which is, of course, how the Year Books had dealt with the claims of individual subjects to property since the early fourteenth century). The expression, "parcels of the crown," is recorded in several places in the reports of Sir Edmund Plowden (1518–1585): in *Fulmerstone v Steward* (1554), *Willion v Berkeley* (1560), and most famous of all *The Case of the Duchy of Lancaster* (1561), parcels are invoked to remove the personal hereditaments of the king from the perpetual and inalienable parts of the realm.<sup>37</sup> This is significant, of course, for no matter how competitive the prerogative conciliar courts were becoming in these decades, still the common lawyers remained best stationed within England

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<sup>34</sup> J.M.W. Bean, *The Decline of English Feudalism, 1215–1540* (Manchester: Manchester University Press, 1968), 235–256. See also Margaret McGlynn, *The Royal Prerogative and the Learning of the Inns of Court* (Cambridge: Cambridge University Press, 2004).

<sup>35</sup> W.S. Holdsworth, "The Prerogative in the Sixteenth Century," *Columbia Law Review* 21, no. 6 (1921): 558–560.

<sup>36</sup> 24 Hen. 8, c. 8; 27 Hen. 8, c. 34. But of the latter statute, see Edward Coke's appraisal in *Calvin's Case* (1608), *Co. Rep.* 25b: "many of the most ancient Prerogatives and royal Flowers of the Crown, as authority to pardon Treason, Murther, Manslaughter, and Felony, power to make Justices in Eyre, Justices of Assise, Justices of Peace and Gaol Delivery, and such like, having been severed and divided from the Crown, were again reunited to the same."

<sup>37</sup> *Richard Fulmerston v. Simeon Steward* (1554) 1 Plowden 101, 75 E[nglish] R[eports] 160; *Henry Willion v. Henry Berkeley* (1560) 1 Plowden 223, 75 E. R. 339; *The Case of the Duchy of Lancaster* (1561) 1 Plowden, 213, 75 E. R. 326.



to work out such distinctions in the first place, playful at times with equitable principles and always in earshot of the Exchequer. Procedurally, there is more than a hint of Babington's model adjudication in this ("come nous entre le Roy & autres"), even if there are none of his flowers—at least until the end of the Tudor period.

The first to articulate a legal position with some reference to flowers in the mainstream law reports after Justice Babington was Sir Francis Gawdy, the queen's serjeant. Fresh after opening the prosecution against Mary Queen of Scots (incidentally, for her conspiracy with a distant relative of Babington's to replace the Protestant queen for a Catholic one), Gawdry is recorded to have appeared in response to the allegation that an action of accompt, which originally came to Henry VIII, could not thereafter entitle Elizabeth. For this, the report has it, "is not an incident inseparable from the Crown, nor a flower of the Crown; as the King cannot grant over to a subject power to pardon felons, for that is proper and peculiar to the person of the King."<sup>38</sup> All of this support for the monarch, in challenges mounted directly against her, saw Gawdry accept in 1588 the office of Judge of the Court of King's Bench, where his encounters with Sir Edward Coke would be frequent. It may well have been that Gawdry was the flower enthusiast giving inspiration to Coke in this period, but it is more likely that Coke ran into the expression in the Year Books, as he developed his mastery of them towards the end of the century.

Coke's report of the *quo warranto* proceedings brought against the abbot of Strata Mercella in the King's Bench just two years later reveals many complex points of law, some of which with greater semblance to those which had concerned the Chancellor of Oxford, Thomas Chase, than to those what had more directly prompted the crown lawyers to consider the office of the monarch itself in Plowden's reports. Here Coke would blend his metaphorical language, considering all "privileges, liberties, franchises, &c" of the realm, issued originally by Henry VIII, to be "as *parcel* of the *flowers* of his Crown." Crucially, Coke added, for such flowers to be "revived again actually and really in the King his heirs and successors" (namely, Elizabeth) required an act of parliament. Franchises of the kind in the possession of this Welsh abbacy, like flowers, died without new statutory endorsement or otherwise required the repeal of Henrician legislation concerning the subordination of Welsh law and the dissolution of the monasteries.<sup>39</sup> Whatever the veracity of the report as a record of the case, the recurrence of floral imagery in specific relation to the "revival" of franchises and jurisdictions is certainly noteworthy (even if these are likely the words of a seventeenth-century partisan looking back into a sixteenth-century utopia).

Flowers featured again in an extended analogy of Coke's in 1593, during a speech of that year to Elizabeth I before the House of Lords. Although his point here was principally to compare this "sweet council of ours" to a "sweet Commonwealth of the little bees ... sucking honey from every flower to bring to the king," only at a very abstract level could flowers here refer to sources of power original of the crown.<sup>40</sup> More remarkable is the appraisal of the

<sup>38</sup> *Anonymous* (1587) 74 E. R. 630.

<sup>39</sup> *The Case of the Abbot of Strata Mercella* (1590) 9 Co. Rep. 24a, 77 E. R. 765. Elsewhere, during the same year, Coke appeared as serjeant in *Sir Moil Finch's Case* (1590) 74 E.R. 420, where, in contemplation of the passing of arrears rents from the king to the queen, the analogy most fitting was "flowers fahn from the stalk."

<sup>40</sup> *Cobbett's Parliamentary History* (London: Hansard, 1806), 1: 890–891. "The little bees have but one governor whom they all serve, he is their king ... he is placed in the midst of their habitations ... They forage abroad, sucking honey from every flower to bring to their king. ... The drones they drive away out of their hives, non habentes

queen's "Laws," which directly follows this analogy and seems to chime with his observations regarding the Strata Mercella abbacy. Laws, said Coke, may be categorised into two types: "the one such as have life but are ready to die, except your maj. breathe life into them again; the other are laws that never had life, but, being void of life, do come to your maj. to seek life."<sup>41</sup> To illustrate the vitality and mortality of legislation, Coke's examples come from the session of parliament just closing. For the first, confirmatory, kind of law, Coke offers the continuation, by the queen-in-parliament, of letters patent originally granted by Henry VIII to reformed ecclesiastical entities after the dissolution of the monasteries. For the second, enactive kind of law, Coke offers the statutes just passed through parliament to clamp down on the "plots" of "Popish recusants."<sup>42</sup>

Years later, still under the reign of a Tudor monarch but nearing the prospect of a Stuart king's accession, Coke was compelled to develop arguments for the continuity and immemoriality of the common law, in the prefaces of reports for a more generally interested readership, many of which were published posthumously.<sup>43</sup> Two examples of florid language stand out from the material published when Coke was alive. The first of these emerges in the preface to the third part of his reports (1602). Again, as with his discussion of "parcels of the flowers of the crown" in contemplation upon the donation of franchises, here Coke would make flowers compete with other metaphors. Hailing the unity and coherence of the judiciary, Coke wondered if the common law might not be "worthy of greater admiration or commendation":

For as in nature we see the infinite distinction of things proceed from some unitie, as many flowers from one root, many rivers from one fountain, many arteries in the body of many from one heart, many veyns from one liver, and many sinews from the braine: So without question, *Lex orta est cum mente divina*, and this admirable unitie and consent in such diversitie of things proceed from God the fountaine and founder of all good Lawes and constitutions.<sup>44</sup>

The ideas at work here seem very different. Here the operation of the courts is aligned with a divine fountain of justice, providing for a standalone defence of English law that did not require any sizing up of the crown (and this is quite how William Murray came to use the same language more famously in 1744).<sup>45</sup> By contrast, and what makes Coke more difficult to

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aculeos [having no stings]. And who so assails their king, in him immittunt aculeos, & tamen rex ipse est sine aculeo [their stings are inserted, and yet the king himself is without a sting]. Your maj[esty]. is that princely governor and noble queen, whom we all serve; being protected under the shadow of your wings we live, and wish you may ever sit upon your throne over us ... Under your happy govt. we live upon honey, we suck upon every sweet flower: but where the bee sucketh honey, there also the spider draweth poison. Some such venoms there be. But such drones and door bees we will expel the hive and serve your maj. and withstand any enemy that shall assault you. Our lands, our goods, our lives are prostrate at your feet to be commanded. Yea, and (thanked be God, and honour be to your maj. for it) such is the power and force of your subjects, that of their own strength they are able to encounter your greatest enemies. And though we be such, yet have we a prince that is *sine aculco*."

<sup>41</sup> *Cobbett's Parliamentary History* 1:391.

<sup>42</sup> 35 Eliz. 1, c. 2.

<sup>43</sup> George Garnett, "'The Ould Fields': Law and History in the Prefaces to Sir Edward Coke's Reports," *Journal of Legal History* 34, no. 3 (2013): 245–284.

<sup>44</sup> Edward Coke, *Le Tierce Part des Reportes del Edward Coke* (London, 1602; *STC* 5499.2), sig. C2r (preface).

<sup>45</sup> *Omychund v Barker* (1744) 26 E. R. 22-3: "a statute very seldom can take in all cases, therefore the common law, that works itself pure by rules drawn from the fountain of justice, is for this reason superior to an act of

caricature, fountains are invoked in his later law reports to defend the crown as a source of “justice,” “mercy,” and “dignity,” in these contexts used to explain “how power flowed through the body politic,” as David Chan Smith puts it.<sup>46</sup>

Before that, coinciding with the accession of James VI & I, readers find in the preface to the fourth part of Coke’s *Reports* (1604) his most ardent defence yet, and perhaps ever, of the common law—portions of which would inspire juristic critics of the prerogative for the next two centuries. Lauding the jurisprudence of his reports as “nothing but his Maiesties owne, being sweet and fruitfull flowers of his Crowne,” Coke recognised at once the privilege and loyalty of the common law enterprise. Historians are roundly disinterested in this phrase, however, showing more interest in the evaporation of his modesty in the line that follows it. Here Coke parrots Bracton: “Ipse autem Rex, non debet esse sub homine sed sub Deo & Lege, quia Lex facit Regem.”<sup>47</sup> The king is subservient to no man, but is subservient to God and the law, for it is the law that makes him the king. The common law may derive its authority from James, in other words, but without the common law there would be no James. Here was a clod of manure squeezed into which were a few gerberas.<sup>48</sup>

## Conclusions

Numerous studies on the legal, political, and cultural formulations of the English crown have restricted their focus somewhat too narrowly to the frame of a corporate distinction between mortality and immortality, manifest in the paradox, or what Maitland would call the “metaphysiological nonsense,” of the king’s two bodies.<sup>49</sup> This article makes the claim that more attention can be given to the interstices of this duality, where the analogies critical to the understanding of royal power appear to warrant explanation. Judges sometimes enjoyed freedom to discuss contentious ideas about the nature of legislation, and the judicature itself, in the courts of England during the fourteenth and fifteenth centuries, it is shown here, with reference to select case law. Politicians now and then assembled to hear speeches that were extravagant in appraisal of kingship and queenship, it is shown here, with reference to select parliamentary records. With these expressions of legal and political thought in mind, some consideration of the cultural imagery associated with kingship over this period appears to provide new clues about the kind of language called into service of such discussions.

In other words, to move away from the crown itself, and to focus instead upon the language used to describe the royal power intrinsic to it, leads naturally to new ways of pondering the circumstances that have compelled legal thinkers to adopt colourful metaphors in the past. To the mind of a medieval pragmatist, of course, abstraction of language provided a convenient way to avoid issuing an expression of doubt about royal power as a matter of fact. Plain speaking can lose you your office, or worse still, your life. A more intriguing question to think about, perhaps, is what commonalities of circumstance compelled legal

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parliament.” William Murray was later made Lord Mansfield.

<sup>46</sup> Smith, *Sir Edward Coke*, 265–267.

<sup>47</sup> Bracton, 2:33. Incidentally, Bracton is considered to be “the crown and flower of English jurisprudence” in Pollock and Maitland, *History of English Law*, 1:206.

<sup>48</sup> Coke, *Quart Part*, preface.

<sup>49</sup> Maitland, “Crown as Corporation,” 134.

thinkers to express doubts about royal power in the first place.

Flowers, which are both vital and mortal, give a few hints. When Chief Justice William Babington implied something of the temporariness of royal donations by invoking the biological certainty of their extinction, as when Lord Chancellor John Stafford emphasised the importance of the four cardinal virtues to restrain the monarch's conduct as monarch, the royal prerogatives lay near to the grasp of a king-in-waiting. Henry's accession, at the end of regency, was a prospect which brought scare into the minds of men enjoying a *certain* type of royal power, but who found themselves, at the same time, not hurrying to upheave it for an *uncertain* type of royal power. Well might James I have been to Edward Coke, then, what Henry VI had been to Babington and Stafford: a king-in-waiting to be dreaded for his potential to misappropriate the royal prerogatives, one indeed whose declared belief it had been, in 1598, "that Kings were the authors & makers of the lawes, and not the lawes of the Kings."<sup>50</sup> We may wince to admit it, but James was not entirely wrong about the Stuart realpolitik. But this is not the point. What is important is how abhorrent these ideas were to Coke and all those like him, at the time, who knew their Bracton and took offense at the jibes of a Scottish king.

If it is plausible to establish some relationship between crises of regency and recorded reassessments of the royal prerogative, it might not come as a surprise, then, that the most memorable of Plowden's reports on the crown and its parcels, on the "corporate" king and his "bodies," occur in the aftermath of a tumultuous period for the monarchy: a period that saw the Act of Succession (1544), the reign of Mary I, and the uncertainty over who should succeed her. Were this correlation not to hold for later developments, then it might be put to rest here, but for a brief peek into the future suggesting otherwise. Looking beyond the fortunes of those parliaments assembled in 1628, 1640, and 1641—which, for Gough, were the Stuart assemblies most prospering in ideas—the constitutional peculiarities of the 1760s and the 1830s might even be recollected in this frame. Legal and political discussions in these very different windows happen to be thick with metaphors tasked with *explaining away* royal power, and what had become most chafing about it in a post-medieval age, ministerial irresponsibility. This is no wild digression, because the result of all this returns us to this article's introductory assessment of the crown, which itself became a metaphor for public authority, good and bad, forasmuch as this is what the crown remains, and is ever likely to remain, until the unnerving prospect of a reckless new monarch gives fresh panic to all inclined to think about the constitution that serves the people of Great Britain.<sup>51</sup> This is unlikely, it might be guessed, because the language of appraising royal power has become conventionally more clinical, as Walter Bagehot, John Austin, Frederic William Maitland, and others describing the operation of the British constitution happened to make a knack of doing so efficiently.<sup>52</sup>

Before all of that, however, it made sense to speak of a crown's flowers. This is

<sup>50</sup> James Stuart, *The True Lawe of Free Monarchies: or The Reciprooke and Mutuall Dutie betwixt a Free King, and his Naturall Subiectes* (Edinburgh, 1598; STC 14409), sig. C7r. See also: McGlynn, *Royal Prerogative*, 196–197.

<sup>51</sup> See, for some legal examples: *The King v Giles* (1820) 146 E. R. 1208; *Rex v Eaststaff* (1818) 171 E. R. 864; *Thurston v Mills* (1812) 104 E. R. 1085. One of the most striking examples in the Commons concerned the growth in power not of the ministers but of the House of Lords. *Cobbett's Parliamentary History* 35:755: "Thus the people are the roots, the king the trunk; from that trunk proceed the limbs, the branches, the twigs, and even the leaves," and this statement follows directly from a reading of Bracton ("Et rex sub lege, quia lex facit regem").

<sup>52</sup> See: Walter Bagehot, *The English Constitution* (London, 1867); John Austin, *The Province of Jurisprudence Determined* (London, 1832); and Maitland, "Crown as Corporation."

something Gough had already established for the Stuart period, although he thought it was unique to that time. Offering a corrective, what this article also provides are a number of much earlier iterations of the “flowers of the crown,” which for readers untaken by this period—or nonplussed by English law—stand as nothing else than charming little reminders of how the symbolism of regalia once powerfully informed, and may yet again, certain aspects of the language of statecraft.